

CALIFORNIA PORTLAND CEMENT CORP.

IBLA 83-1000

Decided September 18, 1984

Appeal from decision of the California State Office, Bureau of Land Management, denying protest of the inclusion of the California Desert Conservation Area reservation in mineral patent 04-81-0014.

Reversed and remanded.

1. Mining Claims: Generally -- Mining Claims: Title

A perfected but unpatented mining claim is property in the fullest sense of the word, and its ownership, transfer, and use are governed by well-defined code or codes of law, and are recognized by states and the Federal Government.

2. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: California Desert Conservation Area -- Statutory Construction: Generally -- Statutory Construction: Legislative History

The language of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), was intended by Congress to have application to patents issued to mining claims perfected after passage of the Act. A patent to a mining claim which had been perfected prior to passage of the Act should, therefore, not contain the restrictive language contemplated by sec. 601(f).

3. Federal Land Policy and Management Act of 1976: California Desert Conservation Area -- Mining Claims: Patent -- Patents of Public Lands: Reservations -- Statutory Construction: Generally

Effect must be given, if possible, to every word, clause, and sentence in a statute. Therefore, the application of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), to mineral patent must be made in a manner which

recognizes valid existing rights of a mineral claimant at the time of passage of the Act.

APPEARANCES: M. William Tilden, Esq., San Bernardino, California, for California Portland Cement Corporation; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

On June 1, 1972, California Portland Cement Corporation (California Portland) filed a mineral patent application seeking legal title to three placer mining claims (Annex No. 2, Annex No. 3, and Annex No. 4) located in sec. 19, T. 13 S., R. 9 E., San Bernardino Meridian, Imperial County, California. The claims, containing a total of 51.605 acres, were located for gypsum in 1968. On October 21, 1976, the Federal Land Policy and Management Act of 1976, P.L. 94-579, 43 U.S.C. §§ 1701-1784 (1982) (FLPMA), was enacted. Although all other things required of California Portland as a part of its patent application had been performed before passage of FLPMA, the application was not perfected until July 28, 1978, when California Portland tendered the purchase price of the claims.

On February 27, 1981, the Bureau of Land Management (BLM) patented the three claims (patent 04-81-0014) to California Portland. On September 3, 1981, California Portland filed a letter with the California State Office, BLM, protesting the inclusion of stipulation No. 3 in the patent, and seeking its removal. That stipulation reads as follows:

The use of the lands described in this patent and any mining activities therein are subject to such reasonable regulations as may be prescribed by the Secretary of the Interior to protect the historical, scenic, archaeological, biological, cultural, economical, scientific, educational, recreational, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within said Area.

California Portland's objection to the stipulation was twofold. First, it claimed that its rights to the patent had vested prior to the passage of FLPMA and that inclusion of the stipulation was, therefore, improper. Second, it argued that even if the stipulation could be lawfully imposed, the language of the stipulation itself was overly broad and exceeded the limitation mandated by FLPMA. In either circumstance California Portland sought removal of the stipulation.

In a decision dated August 24, 1983, BLM rejected California Portland's request that the California Desert reservation be removed from the patent. BLM stated that California Portland had not complied with all the requirements for issuance of a patent at the time FLPMA was enacted; and, therefore, the law required insertion of the reservation in the patent. BLM stated, however, that it had been advised by the Associate Solicitor, Energy and

Resources, that the language for the California Desert reservation in future patents should be:

The use of the lands described in this patent, and any mining activities therein are subject to such reasonable regulations as may be prescribed by the Secretary of the Interior to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to ensure against pollution of the streams and waters within said Area.

BLM informed California Portland that it could apply for issuance of an amendatory patent to include the modified language.

On appeal California Portland renews its objection to inclusion of the reservation and urges its removal. BLM argues that the reservation was required by FLPMA.

Prior to turning to the issues raised by this case, we feel it important to state that we find it unnecessary to determine whether Congress could, consistent with recognized principles of jurisprudence, apply restrictions to claims validly located and perfected prior to FLPMA, since our review of the Act and the legislative history has convinced us that Congress did not so intend to act.

[1] There can be no question that the interest held by the owner of a perfected but unpatented mining claim is a property right. This issue was resolved shortly after the passage of the 1872 Act. In the often quoted statement in Forbes v. Gracey, 94 U.S. 762, 767 (1876), the Supreme Court said of unpatented mining claims:

They are property in the fullest sense of the word, and their ownership, transfer, and use are governed by a well-defined code or codes of law, and are recognized by the states and the federal government. This claim may be sold, transferred, mortgaged, and inherited, without infringing the title of the United States.

See O'Connell v. Pinnacle Mines Co., 140 Fed. 854 (1905), and cases cited therein. Although prior to issuance of patent it cannot be said that the owner of a mining claim has a fee simple title to the land, because the fee title resides in the Government, it has been found that the claimant holds the beneficial estate and the Government holds the fee in trust, to be conveyed to the beneficial owner upon application for patent in the prescribed manner. Noyes v. Mantle, 127 U.S. 348 (1888); Dahl v. Raunheim, 132 U.S. 260 (1889). While the owner of a valid mining claim may obtain a patent, this patent adds little to his security, and there is nothing in the law which requires that a claimant proceed to patent. O'Connell v. Pinnacle Mines Co., *supra*. Keeping in mind the fact that the appellant herein is the owner of perfected mining claims which have been recognized by the Government as being "property in the fullest sense of the word," we will examine the language of section 601(f) and other pertinent provisions of FLPMA.

[2] The stipulation placed in the patent issued to appellant arises from the requirement of section 601(f) of FLPMA, 43 U.S.C. § 1781(f) (1982), which reads:

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against the pollution of the streams and waters within the California Desert Conservation Area. [Emphasis added.]

FLPMA was introduced in the Senate as Senate bill 507 on January 30, 1975, and introduced in the House of Representatives as House bill 13777 on May 13, 1976. Both bills contemplated the California Desert Conservation Area, but only the House version had a provision comparable to section 601(f) of FLPMA. This provision can be found at section 401(f) of the House bill and contains the following language:

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area after the date of approval of this Act shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area. [Emphasis added.]

Following passage of the bills by the respective Houses of Congress the two bills were referred to a Senate-House conference committee. In a meeting of that committee held on August 30, 1976, the committee directed the staff of both Houses to analyze the differences between the two versions and to recommend an appropriate resolution of as many differences as possible. On September 9, 1976, the staff issued its report to the committee. Section 601(f) of the bill as contained in the staff report, did not retain that language emphasized in the above-quoted portion of House bill 13777, but no explanation of the deletion can be found in any of the staff or the

committee materials or documents. <sup>1/</sup> Under the circumstances, we must conclude that the language was deleted because it was redundant. Any other interpretation results in a material deviation from the intent expressed in the House bill, requiring comment by the staff and/or the committee.

On September 29, 1976, S. Rep. No. 94-1724 was issued by the Senate-House Conference Committee. In this report the committee adopted the version of section 601(f) suggested by the staff report. The conference report was agreed to by the House on September 30, 1976, and by the Senate on October 1, 1976. Section 507, as amended, was presented to the President on October 12, 1976, and signed on October 21, 1976.

In addition to the language of section 601(f), FLPMA contains the following language which is important to the resolution of the matter now before us:

Sec. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

\* \* \* \* \*

(f) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

43 U.S.C. § 1701 note (1982).

In East Central Eureka Mining Co. v. Central Eureka Mining Co., 204 U.S. 266 (1907), the Supreme Court was also faced with the necessity of determining the effect of an amendment to the mining laws on previous legislation. Justice Holmes, who delivered the opinion for the Court, noted that the amending Act contained language such as "nor shall this act affect any right acquired under [the prior] act," and "provided that nothing in this act shall be construed to impair in any way, rights or interests in mining property acquired under existing laws." Id. at 270. He then noted that:

We are of opinion that in the present case rights had been acquired within the meaning of the act. It is said that the survey of the mineral patent was not approved or payment made to the United States until after the passage of the act of 1872. [Emphasis added.] But the location had been made and the proceedings under the act of 1866 so far advanced as to

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<sup>1/</sup> The dissent cites sections 601(a) and (b) of FLPMA as supporting its position. Those sections of the Act originated as sections 401(a) and (b) of House bill 13777, and were drafted by the same parties who drafted section 401(f) which is quoted in the text of this opinion. Section 401(f) expresses the specific intent of the drafters of House bill 13777 with respect to the rights of a mining claimant, regardless of the general statements found in sections 401(a) and (b).

exclude adverse claims. The locator had done all that he could do, and we are satisfied that the act of 1872 intended to treat parties that were in that position as having rights that were to be preserved. If Congress were unrestricted by the Constitution the word "rights" still would be the natural word to express the relation of persons to this kind of property where the facts required the officers of the Government to take the steps necessary to permit them to acquire it and they were seeking to acquire it and had manifested their intent and desire by occupation, labor and expenditures. Yet on that supposition there could be no technically legal right. We believe that Congress used the word in a somewhat popular sense, as no doubt it would have used it in the case supposed, without considering what injustice might be within its constitutional power to commit. See Clipper Mining Co. v. Eli Mining & Land Co., 194 U.S. 220; Creede & Cripple Creek Mining & Milling Co. v. Unita Tunnel Mining & Transportation Co., 196 U.S. 337, 342. Id. at 271. [Emphasis in original.]

The parallelism between the "valid existing rights" language of the act considered by the Supreme Court in East Central Eureka, *supra*, and language in FLPMA pertaining to "valid existing rights" is so striking that there can be little doubt that it was the intent of Congress to protect the valid existing rights such as those held by appellant. With respect to the issuance of a patent to appellant, the only way that these rights would be affected by section 601(f) of FLPMA would be by the inclusion of the stipulation in the patent. It was the intent of Congress to have the stipulation placed only in patents to claims which are perfected after the passage of FLPMA. The payment or nonpayment of the purchase price for the claims is not relevant to a determination of what rights are to be protected by the statement in section 601(f) that the application of that section was "subject to valid existing rights." See East Central Eureka, *supra*.

[3] In addition, a well-established doctrine of statutory interpretation is that effect must be given, if possible, to every word, clause, and sentence of a statute. See National Association of Recycling Industries v. I.C.C., 660 F.2d 795, 799 (D.C. Cir. 1981). The first clause in 43 U.S.C. § 1781(f) (1982) states that application of section 1781(f) is "subject to valid existing rights." In order to give effect to the phrase "subject to valid existing rights" the statute must be applied only to mineral locations which had not been perfected prior to the passage of FLPMA. The only right a patent applicant has which would be affected by section 1781(f) is the right to receive a patent not subject to the restrictive clause contemplated by section 1781(f). No other rights pertinent to patent are affected by section 1781(f). To find otherwise would render the first clause in 43 U.S.C. § 1781(f) (1982) meaningless. We therefore find that the addition of stipulation 3 to patent 04-81-0014 was improper.

While the second issue addressed by appellant need not be addressed because we hold that stipulation No. 3 was improperly placed in the patent issued to California Portland, we note that the Associate Solicitor, Energy

and Resources, found the language placed in the patent issued to California Portland to be too broad. We agree.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case is remanded to BLM for issuance of an amendatory patent, without reservation language found in stipulation No. 3.

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R. W. Mullen  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge

## ADMINISTRATIVE JUDGE HARRIS DISSENTING:

The majority finds that inclusion of the California Desert Conservation Area reservation in the patent in question was improper. For the reasons stated below, I dissent.

Where a mining claimant has complied with all the requirements of the mining law, that person has an absolute right to a patent from the United States conveying fee title to the land within the claim. Actions taken by the Secretary of the Interior in processing an application for patent by such claimant are not discretionary. Issuance of a patent can be compelled by court order. Wilbur v. Krushnic, 280 U.S. 306, 318-19 (1930); Roberts v. United States, 176 U.S. 221, 231 (1900); United States v. Kosanke Sand Corp., 12 IBLA 282, 290 (1973). A patent may only contain those conditions authorized by law. Deffeback v. Hawke, 115 U.S. 392, 406 (1885). As the Court stated in Davis' Administrator v. Weibbold, 139 U.S. 507, 528 (1891):

The patent of a mining claim carries with it such rights to the land which includes the claim as the law confers, and no others, and these rights can neither be enlarged nor diminished by any reservations of the officers of the Land Department, resting for their fitness only upon the judgment of those officers.

California Portland argues that all the conditions necessary for patent were performed in 1968, and in any case no later than 1972 when the application for patent was filed. It reasons that since it had full equitable title and conveyance of bare legal title was all that remained, the Department was precluded from imposing a restriction that did not arise until passage of FLPMA in 1976.

BLM correctly points out that California Portland's right to a patent did not vest prior to FLPMA. Although the application for patent was filed in 1972, it was not perfected until July 28, 1978, the date the purchase price for the claims was tendered to BLM.

In Benson Mining & Smelting Co. v. Alta Mining & Smelting Co., 145 U.S. 428, 430 (1891), the Court stated:

In the case of the American Hill Quartz Mine, reported in Sickels' Mining Laws and Decisions, pages 377 and 385, and also in Copp's U.S. Mineral Lands, page 254, are well-considered opinions by the Commissioner of the General Land Office and the Secretary of the Interior, each holding that, when the price of a mining claim has been paid the equitable rights of the purchaser are complete \* \* \*.

See also Aurora Hill Mining Co. v. 85 Mining Co., 34 F. 515, 517 (D. Nev. 1888). Likewise, in Black v. Elkhorn Mining Co., 163 U.S. 445, 450 (1895), the Court stated that "[t]he interest in a mining claim, prior to payment of any money for the granting of a patent for the land, is nothing more than a right to the exclusive possession of the land based upon conditions subsequent \* \* \*." Until payment of the purchase price, a mining claimant obtains no vested right to a patent. Id. at 451.

In 1976 California Portland had not paid the purchase price for the claims; therefore, no right to a patent had vested. Section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1982), states that "[e]xcept as provided in \* \* \* subsection (f) of Section 601 of this Act, \* \* \* no provision of this section \* \* \* shall in any way amend the Mining Law of 1872 \* \* \*." Thus, section 601(f), 43 U.S.C. § 1781(f) (1982), constituted an amendment to the general mining law, and it is applicable to California Portland's patent because no right to the patent had vested on October 21, 1976, the date of FLPMA's enactment. California Portland did not acquire a vested right to a patent until payment of the purchase price of the claims on July 28, 1978.

The discussion above recognizes that the reservation imposed by section 601(f) of FLPMA is expressly made subject to valid existing rights. A brief review of the legislative history of section 601(f) reveals that the House of Representatives version of this provision, as found at section 401(f) of H.R. 13777, 94th Cong., 2d Sess. (1976), imposed the reservation at issue only on mining claims located after the date of approval of FLPMA. The deletion of this limitation by the conference committee and the subsequent passage of section 601(f), as written, supports an interpretation that Congress sought to impose the provisions of section 601(f) on all mining claims in the California Desert Conservation Area, i.e., on those claims located prior to FLPMA's enactment and on those claims located subsequent thereto. Such an interpretation of section 601(f) may be harmonized, I believe, with that section's recognition of valid existing rights. If California Portland had complied with all requirements for patent prior to FLPMA's enactment, including payment of the purchase price, it would have had a valid existing right and inclusion of the reservation in its patent would not have been appropriate.

The case cited by the majority, East Central Eureka Mining Co. v. Central Eureka Mining Co., 204 U.S. 266 (1907), is distinguishable from this case. That case involved a suit to quiet title filed by a company who held title to mining claims located at a time (1863 and 1865) when there was no requirement that the end lines of claims be parallel. The patent issued in 1873 at a time when the 1872 Mining Act had imposed such a requirement, and the patent granted all rights consistent with the 1872 Act. The defendant owned land adjacent to the patented area, and the controversy concerned the portion of the vein under defendant's land.

The Court found that section 3 of the Act of May 10, 1872 (30 U.S.C. § 23 (1982)), should be construed broadly in favor of a claimant who had located a claim prior to that date in view of the provisions of the Act that stated that the Act should not impair rights or interests acquired under existing law. Thus, the Court stated that even though the patent had not been paid for until after the 1872 Act, the mining claimant had "rights that were to be preserved." East Central Eureka, supra at 271.

The majority finds the "parallelism" between the language construed by the Court in East Central Eureka and the language in FLPMA to be "so striking" as to leave "little doubt that it was the intent of Congress to protect the valid existing rights of appellant." To the contrary, I believe that the East Central Eureka decision reflects the Court's recognition that the mining claimant merely accepted what the Government granted it -- that is, a patent granting all that would have been acquired by location under the 1872 Act.

The Court stated at page 271: "The plaintiff is not responsible for the form of the patent." Thus, there is no question that the Government at all times believed the mining claimant in East Central Eureka had "acquired rights" in that case.

The Court also stated: "At all events it [the provision that the Act shall not impair existing rights] should be taken in a liberal sense. There was no sufficient reason why the United States should not be liberal and, as we have said, it was just that it should be." (Emphasis added.) Id. at 271.

In the present case the Government does not believe California Portland "acquired rights," and the East Central Eureka case is distinguishable because in this case there is "sufficient reason" why the Government should not be so liberal. Section 601 of FLPMA, 43 U.S.C. § 1781 (1982), states:

(a) The Congress finds that --

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan [sic] to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

The congressional intent to provide maximum protection to this area is abundantly clear. Therefore, I believe it is consistent with this intent to give a restrictive interpretation to the term "valid existing rights," as used in section 601(f). Appellant's patent should include the reservation language as stated in the statute.

For these reasons, I dissent from the majority position.

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Bruce R. Harris  
Administrative Judge